

DAN F
t: (205) 226-3409
f: (205) 488-5886
e: dmccrary@balch.com

May 10, 2022

Via Electronic Delivery

Alabama Public Service Commission
RSA Union Building
100 North Union Street, Suite 950
Montgomery, Alabama 36104

Attention: Mr. Walter L. Thomas, Jr.
Secretary

Re: Alabama Power Company – Petition for
Certificate of Convenience and Necessity
APSC Docket No. 33182

Dear Secretary Thomas:

In accordance with the Commission's *Procedural Ruling Granting Interventions and Establishing Procedural Schedule* issued November 19, 2021, Alabama Power Company hereby submits its post-hearing brief in the form of a proposed order. This brief has been electronically filed today using the Commission's E-Filing system, with a courtesy copy hand-delivered to the Legal Division. Copies have been served by e-mail on all parties.

If you have any questions regarding this filing, please contact the undersigned.

Very truly yours,

A handwritten signature in blue ink that reads "Dan H. McCrary".

Dan H. McCrary

CC: Legal Division
Service List

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

Alabama Power Company,
Petitioner

Petition: For a certificate of convenience and necessity for the acquisition of existing combustion turbine generating capacity in Calhoun County, Alabama, together with all transmission arrangements, structures, substations, and facilities, environmental control measures, facilities or arrangements for the handling, treatment, transportation, delivery, storage and processing of fuel, and any and all other appliances, appurtenances, facilities, rights, equipment, acquisitions, commitments and accounting authorizations necessary for or incident thereto.

Docket No. 33182

BRIEF OF ALABAMA POWER COMPANY
IN THE FORM OF A PROPOSED ORDER

BY THE COMMISSION:

This matter comes before the Commission by virtue of the petition for a certificate of convenience and necessity (the “Petition”) filed by Alabama Power Company (“Alabama Power” or “the Company”) under Section 37-4-28 of the Code of Alabama. By the Petition, Alabama Power seeks authorization to acquire existing combustion turbine generating capacity known as the Calhoun Power Facility (“Calhoun Power”).

The filing was duly noticed and, in accordance with statutory requirements, a public hearing involving all interested parties was held, following the allotment of time for written and document discovery, a cycle of responsive and rebuttal testimony by the intervening parties and Alabama Power, and the deposing of the Company’s witness in this proceeding.

On the basis of the record compiled in this case, including the written and document discovery and deposition transcript provided to Commission Staff in accordance with the procedural directives applicable to this proceeding and the testimony and exhibits received at the hearing, along with other information available to the Commission in the ordinary course of its regulatory activities, we find the Petition to be supported by substantial evidence and in furtherance of Alabama Power's duties to its customers as a public utility operating within the State of Alabama and under the jurisdiction of this Commission. Specifically, we conclude that Alabama Power has demonstrated a need for additional capacity and presented evidence showing that the proposed acquisition represents a reasonable means by which the Company can meet this need in a reliable and economic manner. Accordingly, the Commission grants the Petition and approves the issuance of a certificate of convenience and necessity for the acquisition of Calhoun Power.

I. PROCEDURAL HISTORY

On October 28, 2021, Alabama Power filed the Petition requesting the issuance of a certificate of convenience and necessity for the acquisition of the generating plant and all related facilities currently owned by Calhoun Power Company LLC, said plant and facilities being located near Eastaboga, Calhoun County, Alabama. In support of its Petition, the Company submitted the pre-filed direct testimony and exhibits of Mr. John Kelley. As contemplated under Alabama Code § 37-4-28, Alabama Power also requested that the Commission hold a public hearing to consider the Petition. The Petition was duly noticed on October 29, 2021. On November 4, 2021, Alabama Power filed an errata to Mr. Kelley's direct testimony, which reflected corrections to Exhibit JBK-4 and page 16 of the testimony.

Petitions to intervene in this matter were timely filed by the Office of the Attorney General (the "Attorney General") and Energy Alabama and GASP (jointly, "Energy Alabama/GASP").

These petitions were granted in the Commission's *Procedural Ruling Granting Interventions and Establishing Procedural Schedule* issued November 19, 2021 ("*November 19 Ruling*").

The *November 19 Ruling* also instituted deadlines for the filing of intervenor testimony and Alabama Power's rebuttal testimony, established a date for the public hearing, set a deadline for the filing of post-hearing briefs and provided parameters for the undertaking of discovery. Beginning in December, Energy Alabama/GASP propounded discovery on Alabama Power. On December 21, 2021, Alabama Power gave notice to the Commission that it had responded to said discovery, and had provided non-public copies containing confidential information to the Legal and Electricity Policy Divisions of the Commission Staff for consideration in the official record of the proceeding. The next day, the Commission issued a *Procedural Ruling Regarding Discovery and Depositions* ("*December 22 Ruling*") directing all parties to submit such a notice to the Secretary of the Commission indicating that discovery responses and any deposition transcripts were being provided to the Legal and Electricity Policy Divisions of the Commission Staff on a non-public basis for consideration in the official record of the proceeding.

On January 7, 2022, Energy Alabama/GASP filed an unopposed motion to extend by seven days the date established for intervenor testimony. On January 11, 2022, the Commission entered an order modifying intervenors' testimony deadline consistent with that request. Thereafter, on January 20, 2022, Energy Alabama/GASP submitted the pre-filed testimony of Mr. Karl Rábago. In response, on March 10, 2022, the Company filed rebuttal testimony sponsored by Mr. Kelley.

On April 8, 2022, purporting to act under the directions of the *December 22 Ruling*, Energy Alabama/GASP filed a Notice of Amended Discovery Response and Amended Table in

Testimony,¹ with a revised version of Table KRR-2 from the testimony of Mr. Rábago and associated workpapers submitted to the Legal and Electricity Policy Divisions of the Commission Staff (“April 8 Filing”).

The Commission held a public hearing in this matter on April 12, 2022.² Prior to the commencement of witness testimony, the Presiding Judge entertained objections from Alabama Power regarding the April 8 Filing.³ Alabama Power argued that the submission was inappropriate, in that it amounted to surrebuttal testimony beyond the scope of the *November 19 Ruling*.⁴ In support, Alabama Power introduced the transmittal communication that Energy Alabama/GASP sent to the parties, but not to the Secretary of the Commission or Commission Staff, in which counsel recited that in light of “certain clarifications” in Mr. Kelley’s rebuttal testimony, Mr. Rábago had “revised his analysis ... and created an Amended KRR-2 to his testimony.”⁵ Alabama Power also disputed the assertion that Mr. Kelley’s rebuttal testimony clarified anything new, noting that Mr. Kelley’s direct testimony and the Company’s responses to discovery from Energy Alabama/GASP (submitted well in advance of Mr. Rábago’s testimony) should have readily alerted Mr. Rábago to the mistaken assumption he made in the course of preparing his responsive testimony.⁶ Finally, Alabama Power stressed that Mr. Rábago’s effort to “amend” his testimony was particularly inappropriate given the amount of time that elapsed

¹ Under our electronic filing procedures, this filing was not perfected until April 11, 2022, the day before the scheduled hearing in this matter.

² As an initial matter, the *pro hac vice* application of Mr. Gregory Buppert for Energy Alabama/GASP was considered and granted. *See* Hearing Tr., p. 14, lines 2-7.

³ *See* Hearing Tr., p. 14, lines 11-21.

⁴ *See id.*, p. 14, line 23 through p. 15, line 4.

⁵ *See* APC Ex. 1; *see also* Hearing Tr., p. 16, line 3 through p. 19, line 16.

⁶ *See* Hearing Tr., p. 18, line 9 through p. 19, line 9.

between Mr. Kelley’s rebuttal testimony (filed with the Commission and served on the parties on March 10) and Mr. Rábago’s purported amendment (April 8).⁷ Moreover, such revision was served on the parties less than two business days before the commencement of the hearing.

In response, Energy Alabama/GASP contended that the submission sought to correct a mistake in Mr. Rábago’s testimony, and that it was in the best interest of the Commission to have a complete and accurate record on which to make a decision.⁸ Energy Alabama/GASP stressed that Mr. Rábago’s conclusions had not changed, and that the submission was “not a whole-scale rewriting of the testimony. It is a correction of an analytical error in [Table KRR-2 of Mr. Rábago’s testimony] that resulted in two subsequent number changes”⁹ Alternatively, Energy Alabama/GASP requested leave to make an offer of proof respecting Mr. Rábago’s revisions to his testimony.¹⁰

The Presiding Judge sustained Alabama Power’s objection, but allowed Energy Alabama/GASP to tender Mr. Rábago’s revised Table KRR-2 and its counsel’s corresponding summary as an offer of proof.¹¹ Thereafter, and as discussed below, Alabama Power and Energy Alabama/GASP each presented their witnesses for direct and cross-examination. On May 10, 2022, the parties submitted post-hearing briefs in the form of proposed orders, consistent with the *November 19 Ruling*.

⁷ See Hearing Tr., p. 19, line 17 through p. 20, line 2.

⁸ See Hearing Tr., p. 20, line 9 through p. 22, line 13.

⁹ See Hearing Tr., p. 20, line 23 through p. 21, line 1 & p. 22, lines 5-9.

¹⁰ See Hearing Tr., p. 22, lines 13-19.

¹¹ See Hearing Tr., p. 22, line 20 through p. 26, line 1. Subsequently, the Presiding Judge permitted Energy Alabama/GASP to supplement the offer of proof with corresponding changes to Mr. Rábago’s written testimony. See Hearing Tr., p. 206, line 8 through p. 208, line 12.

II. GOVERNING LEGAL STANDARDS

This Commission has long recognized that one of the most fundamental obligations of a utility under our jurisdiction is the duty to render adequate service and maintain its facilities.¹²

The Legislature set forth this duty in Alabama Code § 37-1-49:

Every utility shall maintain its plant, facilities and equipment in good operating condition and shall set up and maintain proper reserves for renewals, replacements and reasonable contingencies. Every utility shall render adequate service to the public and shall make such reasonable improvements, extensions and enlargements of its plants, facilities and equipment as may be necessary to meet the growth and demand of the territory which it is under the duty to serve.¹³

As we most recently recognized in the *2020 Certificate Order*, this Legislative mandate is an integral part of Alabama Power’s public utility function, and is neither optional nor delegable.¹⁴

Under our precedent, Alabama Power must obtain a certificate of convenience and necessity for the acquisition of an existing generation facility, such as Calhoun Power.¹⁵ We are

¹² See, e.g., *In re Certificate of Convenience and Necessity (Barry Steam Plant, et al.)*, APSC Docket No. 32953, pp. 8-9 (Aug. 14, 2020), *aff’d sub nom. Energy Alabama, et al. v. APSC*, No. CV-2021-90028.00 (Mtg. Cty. Cir. Ct. Aug. 27, 2021) (“*2020 Certificate Order*”); *In re Certificate of Convenience and Necessity (Barry Steam Plant)*, APSC Docket No. 26115, p. 2 (Dec. 31, 1997) (“*1997 Certificate Order*”); *In re Certificate of Convenience and Necessity (Greene Co. Steam Plant)*, APSC Docket No. 21887, p. 2 (Jan. 24, 1992) (“*1992 Certificate Order*”).

¹³ Ala. Code § 37-1-49; see also Ala. Code § 37-1-80(a) (requiring that the Commission, as part of its fixing rates that are just and reasonable both to the utility and the public, “give due consideration among other things to ... the necessity, under honest, efficient and economical management of such utility, of enlarging plants, facilities and equipment of the utility under consideration, in order to provide that portion of the public served thereby with adequate service.”); cf. *APSC v. Southern Bell Tel. & Tel. Co.*, 42 So. 2d 655, 665 (Ala. 1949) (recognizing the Legislative mandate in section 52, Title 48, Code of 1940—what is now Ala. Code § 37-1-80(a)—is that “the utility is at all times required to furnish adequate service to the public and to construct plant and facilities for enlargement and improvement of its service.”); see also *General Tel. Co. of Southeast v. APSC*, 335 So. 2d 151, 155 (Ala. 1976) (citing *Southern Bell*, *supra*, and stating “the plain holding of that case is that the law of this state ... [is] that the utility is at all times required to furnish adequate service to the public and to construct plant and facilities for enlargement and improvement of its service.”).

¹⁴ See *2020 Certificate Order*, pp. 9, 19; see also *General Tel. Co. of Southeast*, *supra*, at 155.

¹⁵ See, e.g., *In re Escambia Community Utils., LLC*, APSC Docket No. 32193 (Nov. 9, 2015). Alabama Power and Calhoun Power’s owners were required to obtain authorization from the Federal Energy Regulatory Commission (“FERC”) for the transfer of the plant to Alabama Power. FERC issued that authorization on March 25, 2022. See *In re Calhoun Power Co., LLC, et al.*, FERC Docket No. EC22-12-000 (March 25, 2022).

authorized to issue such a certificate in our discretion, with such conditions as we deem advisable. When exercising this authority, however, we are not to interfere with the proper operation of the utility as a business by usurping managerial prerogatives.¹⁶ Moreover, management is presumed to act in good faith, and it is incumbent on those challenging a decision of management to overcome this presumption through substantial, affirmative evidence demonstrating that the decision is not in proper furtherance of the utility's duty.¹⁷

A decision of this Commission must be supported by substantial evidence, and may not contain prejudicial error in its application of the law to the facts.¹⁸ In evaluating the matter before us, we are not "rigidly bound to the recommendation of any particular witness", but instead sit "as an expert administrative body analyzing the evidence and exercising [our] own expert judgment thereon."¹⁹ The Commission may receive and consider evidence shedding some light on an issue, even if not traditionally "admissible" in a court of law.²⁰ We also may take notice of our own orders and may rely upon our expert knowledge of factors and information known and available to us.²¹

¹⁶ See Ala. Code § 37-4-28; see also *Alabama Power v. APSC*, 359 So. 2d 776, 780 (Ala. 1978); cf. *South Central Bell Tel. Co. v. APSC*, 425 So. 2d 1093, 1096 (Ala. 1983) ("A commission is not empowered to substitute its judgment for that of the owners, who are responsible for the rendition of service, unless the owners have abused their discretion.").

¹⁷ See *2020 Certificate Order*, pp. 9-10; see also *Southern Bell Tel. & Tel. Co.*, *supra*, at 674.

¹⁸ See Ala. Code § 37-1-124; see also *APSC v. Cooper Transfer Co.*, 326 So. 2d 283, 287 (Ala. 1975); *Illinois Cent. R. Co. v. Thomas Alabama Kaolin Co.*, 153 So. 2d 794, 795 (Ala. 1963).

¹⁹ *Ala. Gas Corp. v. APSC*, 425 So. 2d 430, 435 (Ala. 1982).

²⁰ See, e.g., *Alabama Power Co. v. APSC*, 179 So. 2d 725, 730 (Ala. 1965).

²¹ See *Illinois Cent. R. Co.*, *supra*, at 796-97; see also *Marshall Durbin & Co. of Jasper, Inc. v. Env't'l Mgmt. Comm'n*, 519 So. 2d 962, 965 (Ala. Civ. App. 1987) ("A decision of an administrative agency is not arbitrary or capricious where there is a reasonable justification for the decision or where it is founded upon adequate principles or fixed standards."); *In re Ala. Gas Corp.*, APSC Docket Nos. 18046 and 18328, 1990 WL 10091984 (APSC 1990) ("Even so, the Commission takes administrative notice of the fact that the rate increases called for by the RSE formula have never exceeded the 4% annual cap.").

III. FUNDAMENTAL ISSUES

In a certificate proceeding such as this, the Commission must make two fundamental determinations before it can lawfully grant Alabama Power's Petition. First, the Commission must be satisfied that the Company has shown a need for additional capacity. If the evidence supports this showing, the Commission must also determine that the evidence demonstrates that the resource or resources, as the case may be, proposed by the Company represent a reasonable means by which to satisfy the identified need. These fundamental issues, and the arguments and evidence of the parties relevant to each, are addressed below.

A. Need for Additional Capacity

Summary of the Evidence

In his direct testimony, Mr. Kelley presented the results of the Company's 2021 integrated resource plan ("IRP"). Those results showed a near-term capacity deficit that resolved by the winter 2026 season, before increasing to over 700 MW in the winter 2028 season.²² Mr. Kelley then testified that recent developments had affected the resource planning assumptions underlying the 2021 IRP. Specifically, he explained that an update by the Environmental Protection Agency to its effluent limitations guidelines ("ELG") rule had presented the Company with new compliance considerations for certain affected units. Those considerations ultimately led the Company to determine to retire Barry Unit 5 by not later than December 31, 2028.²³ The 2021

²² See Direct Testimony of John Kelley, p. 5, line 110 through p. 6 line 129 & Table 1. As observed most recently in the *2020 Certificate Order*, the Company must have sufficient generating resources both to meet the expected requirements of its customers and to provide an adequate margin of reserves. Cf. Ala. Code § 37-1-49 ("Every utility shall maintain its plant, facilities and equipment in good operating condition and shall set up and maintain proper reserves for renewals, replacements and reasonable contingencies."). This Commission found that Alabama Power had demonstrated the appropriateness of planning to diversified summer target and winter target reserve margins (hereinafter "TRM") of 14.89 percent and 25.25 percent respectively. See *2020 Certificate Order*, pp. 12 & n.21, 22; see also Direct Testimony of John Kelley, p. 5, lines 105-109. Those same reserve margins were used as part of the 2021 IRP.

²³ See Direct Testimony of John Kelley, p. 7, lines 134-148 & Ex. JBK-1.

IRP did not factor such retirement into its assessment; rather, the 2021 IRP assumed Barry Unit 5 would be available to meet the needs of customers through the end of its depreciable life in 2036.²⁴ Thus, the resource need presented in this proceeding is the loss of 757 MW of capacity, required for system reliability, due to environmental mandate compliance requirements affecting the availability of Barry Unit 5 beyond 2028, if not sooner.

Energy Alabama/GASP's witness Mr. Rábago disputed Alabama Power's need for capacity.²⁵ According to Mr. Rábago, Alabama Power did not produce an IRP, which he described as "a single consolidated planning document that lays out a discussion" of a number of different elements informing the ultimate plan and action on it.²⁶ Mr. Rábago also stated that "as a member of the group of Southern Company operating companies [Alabama Power] has access to significant excess capacity for several more years."²⁷ As to the question of need, the alleged deficiencies essentially stop here. Mr. Rábago did not offer any testimony disputing or otherwise challenging Alabama Power's evidence as to its resource adequacy over the next 10 years, including the resources to which Alabama Power holds capacity entitlements as owner or by contract, Alabama Power's load forecast over that time,²⁸ or the TRMs factoring into the Company's analysis. Nor did Mr. Rábago dispute Alabama Power's valuation of the Barry Unit 5 capacity or the Company's evidence that retirement of the unit is in the best interest of Alabama Power's customers.

In his rebuttal testimony, Mr. Kelley refuted Mr. Rábago's attacks on Alabama Power's claim of need. First, Mr. Kelley rejected Mr. Rábago's claim that an IRP is a single document,

²⁴ *See id.*, p. 8, lines 155-163.

²⁵ *See* Direct Testimony of Karl Rábago, p. 5, lines 2-3.

²⁶ *Id.*, p. 8, lines 13-17 & Ex. KRR-5.

²⁷ *Id.*, p. 9, lines 4-8 & Ex. KRR-6.

²⁸ *Cf.* Hearing Tr., p. 63, line 16 through p. 64, line 21 & p. 70, lines 2-9.

emphasizing that the IRP represents a comprehensive, data-intensive process.²⁹ Mr. Kelley also reiterated that the Company relied on that traditional IRP process to identify the reliability-based need and inform it as to the types of resources that might be appropriate to meet that need. Second, Mr. Kelley dismissed Mr. Rábago’s insistence that Alabama Power should rely on potential surplus capacity held by the other Southern Company operating companies. Mr. Kelley reminded that in the *2020 Certificate Order*, the Commission found that Alabama Power would be at odds with both Alabama law and the Southern Company System Intercompany Interchange Contract (“IIC”) if it relied on capacity controlled by affiliates, rather than ensuring it had adequate resources to provide reliable service to its own customers.³⁰

At hearing, Energy Alabama/GASP argued that Alabama Power had failed to include “significant megawatts” in its analysis of need.³¹ Its examination of Mr. Kelley, however, did not corroborate the claims. Mr. Kelley confirmed the basis for the Company’s need, namely the retirement of Barry Unit 5 for purposes of compliance with the ELG rule.³² Mr. Kelley further explained that recently approved solar projects with a combined nameplate capacity of 160 MW did not, as Energy Alabama/GASP apparently thought, provide 160 MW of equivalent capacity for deployment during the Company’s winter peak. Rather, for purposes of meeting a winter peak, those resources could be expected to have a capacity equivalence of approximately 9 MW.³³ Mr.

²⁹ See Rebuttal Testimony of John Kelley, p. 18, line 9 through p. 19, line 4.

³⁰ See *id.*, p. 19, lines 5-16.

³¹ See Hearing Tr., p. 39, line 17 through p. 40, line 10.

³² See Hearing Tr., p. 54, lines 1-12.

³³ See Hearing Tr., p. 75, line 3 through p. 78, line 10; *see also* p. 166, lines 11-19.

Kelley also noted that the Company's analysis of need, as reflected in its IRP, included the deployment of the 200 MW of DSM and DER capacity authorized by the *2020 Certificate Order*.³⁴

Mr. Kelley further testified as to Alabama Power's inability to satisfy its resource needs through reliance on its sister operating companies. In response to questions from Energy Alabama/GASP, he explained how the resources of all of the Southern Company operating companies are pooled together and economically dispatched to meet the electricity needs of the entire system. In doing so, Mr. Kelley emphasized that while Alabama Power does benefit from the receipt of lower cost *energy* from an affiliate, Alabama Power cannot and does not plan on the availability of those resources for its *capacity* need purposes.³⁵

Commission Findings and Conclusions

It is well settled that the existence of a future capacity deficit relative to Alabama Power's target reserve margin constitutes a prima facie demonstration of a reliability-based need by the Company.³⁶ Likewise, the Company's IRP process has long served as the basis for petitions to this Commission for certification of new resources required for reliability. We are familiar with that process and the manner by which it is conducted, having reviewed and endorsed the use of the IRP process for this purpose on a number of occasions.³⁷ With such familiarity, we understand that the IRP *is a process*, not a limited summary document prescribing a course from which Alabama Power cannot deviate. Indeed, as noted by Mr. Kelley, the IRP yields benchmark results

³⁴ See Hearing Tr., p. 191, line 15 through p. 192, line 6; *see also* Hearing Tr., p. 59, line 12 through p. 60, line 5.

³⁵ See Hearing Tr., p. 69, line 17 through p. 74, line 13; *see also* Hearing Tr., p. 192, line 21 through p. 195 (providing further explanation for why Alabama Power does not rely on potentially available capacity of the other Southern Company operating companies for capacity planning purposes).

³⁶ See *2020 Certificate Order*, pp. 18-19; *1997 Certificate Order*, p. 4; *1992 Certificate Order*, p. 3.

³⁷ See, e.g., *2020 Certificate Order*, pp. 19, 27, 31; *1997 Certificate Order*, pp. 5-6; *1992 Certificate Order*, p. 3.

that not only identify current and future reliability needs, but also provide a basis from which the Company makes other determinations, such as the ELG compliance decisions affecting Plant Barry.³⁸

The 2021 IRP shows decreasing needs for capacity in the near-term, as the resources certificated in Docket No. 32953 enter retail service in 2023 and for the winter of 2024, before those needs once again increase in the latter part of the decade.³⁹ These reliability needs, however, presuppose the operation of Barry Unit 5 and the availability of its 757 MW of capacity through 2036.⁴⁰ The loss of that capacity, as precipitated by the ELG rule, will exacerbate the existing capacity deficit, relative to the Company's winter TRM. In the context of our precedent, this showing constitutes a *prima facie* demonstration of need and the proper evidentiary foundation for the issuance of a certificate of convenience and necessity. In addition, the Company faces a current capacity deficit, particularly for the coming winter season of 2023, when Alabama Power projects a shortfall against its winter TRM of more than 2,000 MW.⁴¹ While this near-term shortfall might be manageable through other means, the reliability need nonetheless remains evident and thus warrants the Company's exploration of reasonable approaches to address it.

Energy Alabama/GASP do little to challenge this evidence. Indeed, their witness Mr. Rábago is clear in his belief that Barry Unit 5 should close immediately.⁴² Despite this admission and the resultant loss of 757 MW of capacity, he fashions some opposition on the issue of need; however, his words lack any meaningful evidentiary support. As summarized earlier, Mr.

³⁸ See Hearing Tr., p. 59, lines 12-20 & p. 98, line 19 through p. 99, line 5.

³⁹ See Direct Testimony of John Kelley, p. 5, line 110 through p. 6 line 129 & Table 1.

⁴⁰ See *id.*, p. 8, lines 155-163.

⁴¹ See *id.*, p. 10 Table 2.

⁴² See Direct Testimony of Karl Rábago, p. 10, lines 10-12 & p. 16, line 19.

Rábago's criticism of Alabama Power's asserted need for a reliability-based capacity addition rests upon an attack on the IRP and on his continuing view that Alabama Power should lean on potential capacity that other Southern Company operating companies might have in the future. Against the record evidence and our precedent, neither of these arguments is persuasive.

Alabama Power does from time to time produce a summary report of its IRP process. But the absence of such a summary report does not mean the Company has failed to employ the IRP process. We only need look as far back as Alabama Power's petition for a certificate of convenience and necessity for the power purchase agreement with Calhoun Power (the last such needs-based certificate before that issued in the *2020 Certificate Order*) to see the Company relying on the IRP process, notwithstanding the absence of a summary report.⁴³ More importantly, the value of the IRP process lies not in a report, but in its comprehensive underlying information and inputs, the detailed analytical modeling employed, and the benchmark outputs.⁴⁴ The record reflects the Company's use of said information and its production to Energy Alabama/GASP in response to discovery.⁴⁵ If Energy Alabama/GASP believed the IRP process to be flawed or the inputs and results from it unsupportive of the Company's conclusion as to the resource adequacy implications of an early retirement of Barry Unit 5 in compliance with the ELG rule, it was

⁴³ See *In re Certificate of Convenience and Necessity (Calhoun Power PPA)*, APSC Docket No. 27785, p. 2 (April 22, 2009).

⁴⁴ Cf. *2020 Certificate Order*, p. 29. As to this point, Mr. Rábago's claims that Company committed foul by not developing a summary report ring hollow, given his disparagement of the summary report included by the Company in connection with its petition in Docket No. 32953. See *id.* Perhaps recalling his prior testimony, Mr. Rábago includes with his testimony here a report as to integrated resource planning "best practices". See Ex. KRR-5. Mr. Rábago does not explain, however, how the report undermines Alabama Power's conclusion that an early retirement of Barry Unit 5 increases Alabama Power's need for capacity in the years 2024 and beyond. Moreover, the critical elements of a "good electric system IRP" are to our knowledge reflected in the Company's IRP process. Cf. Ex. KRR-5, pp. 28-32. While the documentation may not satisfy Mr. Rábago, we believe the meaningful components of the process are what matter. Mr. Rábago does not offer any evidence assailing those.

⁴⁵ See Direct Testimony of Karl Rábago, p. 8, lines 9-10 & n.6.

incumbent upon them to come forward with competent and substantial evidence proving out that belief, because the Company's direct case established otherwise. They failed to do so.

Energy Alabama/GASP likewise do not undermine the Company's showing of need by arguing that Alabama Power should rely on excess capacity the Southern Company operating companies might have at the moment.⁴⁶ To the extent any might have questioned the ability of Alabama Power to lean on its affiliate companies, as Energy Alabama/GASP contend, we resolved that question definitively in the *2020 Certificate Order*. Alabama Power cannot rely on the capacity of other Southern Company electric utilities to meet the long-term needs of its customers. To do so conflicts with the Company's duty to serve under Alabama law, and it is at odds with the IIC's requirement that each participant maintain adequate resources to reliably serve its own obligations.⁴⁷

Assertions pursued by Energy Alabama/GASP at hearing do not require a different conclusion. Based on their opening argument and questions at the hearing, Energy Alabama/GASP seemed to be laying out a theory that Alabama Power does not need to replace much of the capacity equivalence of a retired Barry Unit 5 because: (i) the Commission approved two new 80 MW solar projects after the 2021 IRP became final; and (ii) the Company still has approximately 150 MW of the previously authorized 200 MW of DSM and DER to deploy

⁴⁶ To that end, Georgia Power's IRP (Energy Alabama/GASP Ex. 2) reveals how transient the apparent "excess capacity" of a sister company can be. While having no material bearing on this Alabama Power proceeding, the exhibit does show that Georgia Power appears to be planning to retire a number of facilities in the fairly near term (e.g., Wansley Units 1-2 (over 900 MW) and Wansley Unit 5A in 2022; Bowen Units 1-2 (over 1,400 MW) in 2027). *See id.*, pp. 1-5, A-137 & A-138. As owner of those and other capacity resources, Georgia Power can obviously change these plans, subject to regulation by the Georgia Public Service Commission. Because Georgia Power controls the future of its generating resources, Alabama Power cannot meet its statutory obligation to provide reliable service to electric customers in Alabama by assuming such resources will be available in the future.

⁴⁷ *See 2020 Certificate Order*, p. 22.

(pursuant to the certificate authority issued in the *2020 Certificate Order*).⁴⁸ As testimony during the hearing made clear, however, the capacity equivalence of the two solar resources in the winter season is approximately 9 MW, not 160 MW.⁴⁹ Likewise, the 2021 IRP reflects the deployment of the full 200 MW of DSM and DER.⁵⁰ While deployment may not reach fruition until 2025, Alabama Power has planned on the availability of that capacity. In sum, to the extent that Energy Alabama/GASP thought the Company's IRP was misstated by 360 MW, the record proves otherwise.

In conclusion, the evidentiary record supporting Alabama Power's need for capacity is straightforward and effectively undisputed. The retirement of Barry Unit 5 due to compliance requirements with the ELG rule results in the loss of 757 MW of capacity that the Company's 2021 IRP included among the resources available to meet the demands of Alabama Power's customers. The retirement of this capacity, without replacement, aggravates an existing capacity shortfall relative to the Company's winter TRM across the planning horizon of the IRP. Accordingly, we find that the record before us reflects substantial evidence that supports Alabama Power's need for additional capacity to replace that lost due to the retirement of Barry Unit 5. Based on the foregoing, the Commission concludes that the Company has satisfied the first fundamental requirement in this certificate proceeding, which is to show the requisite need for new capacity to continue to provide reliable service to its territorial customers.

⁴⁸ See, e.g., Hearing Tr., p. 39, line 17 through p. 40, line 10 & p. 75, line 3 through p. 77, line 12.

⁴⁹ See *id.*, p. 77, lines 2-12.

⁵⁰ See *id.*, p. 191, line 15 through p. 192, line 6.

B. Reasonable Means to Satisfy the Need

Summary of the Evidence

The Company's Petition seeks authority to acquire Calhoun Power, an existing combustion turbine generating facility. Alabama Power currently holds the exclusive rights to the output of the resource pursuant to a previously-certified purchase power agreement, but that agreement expires at the end of 2022. By the requested authority, Alabama Power would acquire ownership of the resource outright, and the facility would remain in service to retail customers until its expected retirement in 2042.

Company witness Mr. Kelley explained how the acquisition of the facility would enable Alabama Power to avoid the costs of operating Barry Unit 5 through its latest possible retirement date, as allowed by the ELG rule (*i.e.*, the end of 2028). He described the transaction as an attractive "swap",⁵¹ by which the Company can replace the Barry Unit 5 capacity with roughly the same amount of more cost-effective Calhoun Power capacity.⁵² The acquisition of Calhoun Power not only allows for the realization of cost savings compared to the continued operation of Barry Unit 5, but also is superior to other potential resource alternatives that might be pursued for this purpose. Specifically, the Company's analysis showed the acquisition and operation of Calhoun Power for its remaining life to be more cost-effective than a number of different alternatives, including: (i) a representative PPA; (ii) the construction of a new combustion turbine facility; and (iii) procurement of a comparable amount of capacity in the form of either solar-battery energy storage systems ("BESS") or standalone BESS systems.⁵³

⁵¹ See Deposition of John Kelley, p. 96, lines 10-21; *see also* p. 180, lines 7-12.

⁵² See Direct Testimony of John Kelley, p. 8, line 164 through p. 9, line 181; p. 12, line 252 through p. 13, line 269.

⁵³ See *id.*, p. 13, line 270 through p. 16, line 327.

In addition to these favorable economic comparisons, Calhoun Power possesses a number of other beneficial attributes. Mr. Kelley testified how Calhoun Power has been serving Alabama Power customers for nearly two decades, during which time it has been interconnected to the Company's transmission system and integrated into the economic dispatch of the Southern electric system. Alabama Power thus has actual experience and a proven track record respecting this facility, which provides further assurance as to its reliability. With the facility's contract soon to expire, Calhoun Power also is available to meet the needs of customers in a timely fashion, including during the winter of 2023 when, as the IRP shows, the Company has a notable capacity shortfall. Finally, as Mr. Kelley observed, Alabama Power's capacity needs are largely peaking in nature. Since Calhoun Power is a peaking resource, it meets this capacity need in a more cost-effective manner than Barry Unit 5.⁵⁴

Through their witness Mr. Rábago, Energy Alabama/GASP attacked a number of the predicates underlying Alabama Power's conclusion that Calhoun Power represented the best resource option for customers. First, Mr. Rábago challenged Calhoun Power's ability to serve as a legitimate alternative to Barry Unit 5. In his view, Barry Unit 5 has not been and cannot be operated as a peaking facility. Given this, he finds "no meaningful basis" to evaluate Calhoun Power as a replacement option for Barry Unit 5, and when this "fundamental error" is corrected, the Company's basis for acquiring the facility "is unsustainable".⁵⁵

Mr. Rábago then criticized the Company's economic analysis of Calhoun Power as compared against potential alternative resource options. Specifically, he faulted the Company for adding to alternative options the costs of Barry Unit 5's continued operation (until those units

⁵⁴ See *id.*, p. 11, line 220 through p. 12, line 247.

⁵⁵ Direct Testimony of Karl Rábago, p. 14, line 1 through p. 15, line 10.

could be on-line and in-service to customers), claiming such a technique to be “[i]n violation of widely accepted financial analysis principles.”⁵⁶ Mr. Rábago also accused the Company of failing to reflect the volatility of gas prices or the likelihood of carbon emission prices and other environmental controls in its evaluation of Calhoun Power.⁵⁷ In addition, he expressed concern that the Company did not evaluate Calhoun and other resources on a level playing field by properly quantifying Calhoun’s shorter useful life, as compared to a solar/BESS facility.⁵⁸

Next, Mr. Rábago turned his focus to the Company’s evaluation of the solar/BESS resources. He testified that the evaluation improperly obscured the relative merits of the different solar/BESS projects, and that if Alabama Power had focused on the “best” fifteen projects, it would have obtained a sub-portfolio that was less costly than Calhoun Power, and with additional savings to deploy toward demand-side or other resources needed to fill a remaining 80 MW gap.⁵⁹ In furtherance of this claim, Mr. Rábago stated that he saw no evidence of the Company considering DSM or DER as an alternative resource option to Calhoun Power.⁶⁰ Mr. Rábago also contended that the Company’s use of the ratepayer impact measure (“RIM”) test “unreasonably” constrains DSM program adoption, and claimed that Alabama Power should employ a true cost-benefit analysis.⁶¹ Mr. Rábago further accused Alabama Power of not applying the RIM test to “the generation resources it proposes in this proceeding.”⁶²

⁵⁶ *Id.*, p. 16, lines 3-16.

⁵⁷ *See id.*, p. 17, line 17 through p. 18, line 5.

⁵⁸ *See id.*, p. 18, line 10 through p. 19, line 2.

⁵⁹ *See id.*, p. 24, line 15 through p. 26, line 15 and Table KRR-2.

⁶⁰ *See id.*, p. 27, lines 1-8.

⁶¹ *See id.*, p. 28, lines 3-18 & Ex. KRR-28.

⁶² *Id.*, p. 28, lines 10-11.

Through rebuttal testimony from Mr. Kelley, Alabama Power responded to Mr. Rábago's claims. Mr. Kelley focused on what he viewed as Mr. Rábago's principal claim, namely that a sub-portfolio of solar/BESS resources could be fashioned at a cost lower than Calhoun Power. Mr. Kelley pointed out that Mr. Rábago's analysis wrongly removed a number of cost considerations, and that when those were returned to the analysis, the economic value of the Calhoun Power acquisition becomes readily apparent.⁶³

The first excluded item involved transmission costs. Mr. Kelley explained that the solar/BESS projects recommended by Mr. Rábago failed to reflect about two-thirds of the costs associated with interconnecting the portfolio to the Alabama Power electric system and the necessary system upgrades to accommodate delivery of the power from such facilities or the charging of their BESS from the grid. Mr. Kelley could not be certain whether Mr. Rábago intentionally or mistakenly excluded the costs, but regardless, the costs had to be factored into the analysis, and doing so confirmed that the portfolio of solar/BESS projects had a higher cost than Calhoun Power.⁶⁴

Mr. Kelley next discussed how Mr. Rábago also excluded the value associated with Calhoun Power being able to serve customers in 2023, along with the costs associated with the Company having to continue operating Barry Unit 5 for system reliability until the alternative resources (e.g., the solar/BESS projects) could be completed and made available to serve customers. As to the former item, Mr. Kelley observed that Mr. Rábago did not disclose the omission in his evaluation. Regardless, Mr. Kelley emphasized that the value is quite real and

⁶³ See Rebuttal Testimony of John Kelley, p. 3, line 6 through p. 5, line 2.

⁶⁴ See *id.*, p. 6, line 12 through p. 9, line 11. The offer of proof discussed at the outset of this order concerns the erroneous exclusion of transmission costs by Mr. Rábago and his effort to correct the mistake. Our view of the evidentiary weight of that offer of proof is discussed below.

could not be ignored, given Alabama Power's significant winter period capacity shortfall in 2023.⁶⁵

As to the Barry Unit 5 operating costs, Mr. Kelley reiterated why those costs warranted inclusion in the economic evaluation. In short, the retirement of Barry Unit 5 would contribute to a significant capacity deficit, and there are costs associated with the procurement of generation to address it.⁶⁶ Mr. Kelley also explored Mr. Rábago's claim that inclusion of those costs "violat[ed] widely accepted financial analysis principles."⁶⁷ Mr. Kelley testified that in response to discovery, Energy Alabama/GASP clarified that Mr. Rábago's opinion was that inclusion of the costs exemplified the "sunk cost fallacy or error." Mr. Kelley then explained that the operating costs included in the Company's evaluation comprised only incremental costs (such as fuel costs) and reflected no sunk costs. Thus, Mr. Kelley did not see how the Company's analysis in any way implicated the so-called sunk cost fallacy.⁶⁸

Mr. Kelley also responded to Mr. Rábago's claim that the Company had inadequately assessed the risks of fuel price volatility and future environmental controls. Mr. Kelley testified that economic evaluation of Calhoun Power included a range of gas price and carbon price scenarios that showed the acquisition maintained significant economic stability, as compared to the potential alternatives.⁶⁹ Mr. Kelley attributed this to Calhoun Power being a peaking facility,

⁶⁵ See *id.*, p. 9, line 17 through p. 10, line 15.

⁶⁶ See *id.*, p. 12, line 1 through p. 13, line 8. Mr. Kelley also responded to Mr. Rábago's claims regarding the need for the evaluation to be performed on a level playing field. Among other things, Mr. Kelley observed that the Company's evaluation in fact captured the unequal lives of the resources under study, with the solar/BESS resources given a capacity value credit for the years during which they would be available beyond Calhoun Power's expected retirement. See *id.*, p. 13, line 15 through p. 14, line 6.

⁶⁷ Direct Testimony of Karl Rábago, p. 16, line 6.

⁶⁸ See Rebuttal Testimony of John Kelley, p. 10, line 16 through p. 12, line 7.

⁶⁹ See *id.*, p. 15, lines 5-19.

which by design operates less than a non-peaking resource.⁷⁰ Mr. Kelley then took exception to Mr. Rábago's claim that he had characterized Barry Unit 5 as a peaking resource. Repeating his actual direct testimony, Mr. Kelley reiterated that Barry Unit 5 had been exhibiting capacity factors "more like those of peaking resources" and that peak load requirements seemed to be prompting the commitment of Barry Unit 5. By replacing Barry Unit 5 with a true peaking plant, Mr. Kelley concluded, customers of Alabama Power would realize significant cost savings—a conclusion corroborated by the economic evaluation included with his direct testimony.⁷¹

Finally, Mr. Kelley addressed arguments from Mr. Rábago that the Company had not considered DSM or DER options, and that it should abandon the RIM test as the means by which it measures the potential merits of such programs. Mr. Kelley explained how such options were reflected in the 2021 IRP, and how Alabama Power continued to pursue the deployment of the 200 MW of DSM and DER resources for which authorization was received in Docket No. 32953. Mr. Kelley also discussed how the full amount of the 200 MW might not be in place until 2025, and that finding an additional amount comparable to the capacity of Calhoun Power was thus unrealistic. Mr. Kelley closed by reviewing the Commission's endorsement of the RIM test in the *2020 Certificate Order* and its rejection of Mr. Rábago's arguments in that proceeding calling for the discontinuation of its use.⁷²

At hearing, Energy Alabama/GASP argued that Alabama Power had not proven Calhoun Power to be the most cost-effective resource option for customers.⁷³ In support, they contended that Alabama Power had "unduly restricted" an RFP for renewable resources that, if appropriately

⁷⁰ See *id.*, p. 16, lines 1-20.

⁷¹ See *id.*, p. 17, lines 1-17; see also Direct Testimony of John Kelley, Ex. JBK-3 (APC Ex. 4).

⁷² See Rebuttal Testimony of John Kelley, p. 19, line 17 through p. 21, line 3.

⁷³ See Hearing Tr., p. 39, lines 14-16.

issued, could have yielded more options. They also stated that Alabama Power had not issued an RFP for short-term purchase power agreements. In addition, Energy Alabama/GASP claimed that Alabama Power failed to consider a portfolio subset that could have provided more cost-effective options.⁷⁴

When questioned regarding the RFPs that informed the Company's analysis and conclusions regarding the value of Calhoun Power, Mr. Kelley provided additional details and context. As to the conditions included with the RFP for renewable resources, Mr. Kelley explained how Alabama Power had evaluated solar/BESS proposals received in response to the 2020 RFP required by the certificate of convenience and necessity granted in Docket No. 32382 ("*2015 RGC Order*"). That certificate imposed certain conditions on potentially eligible projects, and the RFP had been tailored accordingly.⁷⁵ Mr. Kelley also disagreed with the proposition that the performance of an updated capacity RFP would have yielded more competitive projects than Calhoun Power.⁷⁶ In his opinion, and given his knowledge of the market for capacity, a new RFP would not elicit a proposal better than Calhoun Power.⁷⁷ Furthermore, development, issuance and evaluation associated with a new RFP would have injected significant and unproductive delay.⁷⁸

Mr. Kelley also responded to questions suggesting that the Company could have created a subset of the solar/BESS portfolio that was more cost-effective or less costly than the entire solar/BESS portfolio. He acknowledged the rather obvious fact that, all things equal, a subset with lower transmission costs would be lower in cost than the whole portfolio, but refused to agree that

⁷⁴ See *id.*, p. 39, line 20 through p. 40, line 16.

⁷⁵ See *id.*, p. 80, line 1 through p. 83, line 8; see also Hearing Tr., p. 195, lines 17-23.

⁷⁶ See *id.*, p. 95, line 17 through p. 97, line 11.

⁷⁷ See *id.*, p. 91, line 10 through p. 92, line 15 & p. 96, lines 8-17; see also Hearing Tr., p. 170, lines 4-14.

⁷⁸ See *id.*, p. 104, lines 3-19.

a cost-effective subset was, in fact, a viable possibility.⁷⁹ On redirect, Mr. Kelley noted that a subset of the whole portfolio would leave the Company short of the megawatts needed to reestablish capacity levels consistent with Barry Unit 5 in operation. In addition, a smaller subset portfolio would result in Alabama Power being required to run Barry Unit 5 longer, and thus incurring those costs as well.⁸⁰

Commission Findings and Conclusions

For the reasons that follow, we find the substantial weight of the evidence supports Alabama Power's requested acquisition of the Calhoun Power generating facility to meet its identified capacity need. The record shows Calhoun Power to be the least-cost option among the potentially viable alternatives available to the Company. Calhoun Power also possesses a number of attributes that augment the value of the acquisition and contribute to our decision here. Calhoun Power already is connected to the Alabama Power grid, so access to the output of Calhoun Power requires no incremental transmission cost investment. Moreover, this resource has been integrated in the operation of the Southern electric system for many years, and is available to serve customers for the coming winter 2023. Given Calhoun Power's longstanding inclusion as an Alabama Power resource in system dispatch, the Company has significant familiarity and confidence that the facility will satisfy the reliability goals for which it is being acquired. Furthermore, the owners of the facility have obtained a discounted firm natural gas transportation rate, helping to lower the fuel delivery costs associated with Calhoun Power's operation.⁸¹

⁷⁹ See *id.*, p. 89, line 19 through p. 90, line 15; p. 169, lines 18-23.

⁸⁰ See *id.*, p. 198, lines 2-7.

⁸¹ See *id.*, p. 116, lines 1-12.

In sum, we agree with Mr. Kelley’s observation at hearing that the acquisition of Calhoun Power, based on the record developed in this case, constitutes an extraordinary opportunity for Alabama Power and its service to customers.⁸² Alabama Power’s analysis of the economic benefits of Calhoun Power, measured against the continued operation of Barry Unit 5 as well as potential supply alternatives, is clear and undisputed.⁸³ Acquiring Calhoun Power, as compared to controlling Barry Unit 5 to comply with the ELG rule, yields savings to customers in excess of \$700 million (averaged across the fuel and carbon cost scenarios evaluated).⁸⁴ Measured against potential alternatives on the basis of total lifecycle costs, Calhoun Power likewise clearly excels, being nearly \$100/kW less on average than its closest competitor.⁸⁵

Energy Alabama/GASP do not mount any credible challenge to the Company’s analysis. As summarized above, the evidentiary record reveals their efforts in opposition as mistaken and incomplete characterizations of the Company’s data, or an exploration of “what-ifs”—neither of which satisfies the evidentiary burden they carry in this case. As to the first point, Alabama Power’s rebuttal testimony laid bare the errors in Mr. Rábago’s analysis of the alleged competitiveness of the solar/BESS portfolio. It is not difficult to make other resource options appear more competitive than they actually are if the costs of pursuing them are understated or ignored. Such costs, however, are not properly ignored or disregarded, and Mr. Rábago did not offer any convincing reason or justification for his doing so.

⁸² See *id.*, p. 91, line 10 through p. 92, line 3 & p. 196, lines 6-13.

⁸³ See Direct Testimony of John Kelley, p. 12, line 252 through p. 17, line 348 & Ex. JBK-3, Ex. JBK-4 & Ex. JBK-5.

⁸⁴ See Ex. JBK-3.

⁸⁵ See Ex. JBK-4.

Mr. Rábago himself appears to admit his erroneous exclusion of transmission costs, as evidenced by Energy Alabama/GASP's eve-of-hearing effort to rehabilitate his testimony. When those costs are restored, the cost/kW of the solar/BESS portfolio still far exceeds that of Calhoun Power. Absent still is the reliability benefit of having Calhoun Power available for the winter of 2023 as well as the cost of having to operate Barry Unit 5 until the solar/BESS portfolio can come online, both of which we find to be very real values properly ascribed to the analysis. Silent as to the former, Mr. Rábago claims the latter consideration should not apply, but his rationale is unsustainable. There is no "sunk cost fallacy" associated with the inclusion of Barry Unit 5 operating costs because there are no sunk costs reflected in the Company's evaluation. Energy Alabama/GASP appear to speculate that "something else" might be available in lieu of continued operation of Barry Unit 5, but as Alabama Power correctly noted, the bridge capacity will need to come from somewhere and there will be an associated cost. Whether the capacity results from continued operation of Barry Unit 5 or some other hypothetical resource, the economics of the solar/BESS portfolio are adversely affected relative to Calhoun Power.⁸⁶

With respect to solar/BESS alternatives, we have reviewed Mr. Rábago's revised Table KRR-2, included in the record as an offer of proof, and find it to corroborate the evidence from Alabama Power. First, the total cost of the solar/BESS portfolio, as between the original and revised Table KRR-2, remains unchanged whether the transmission costs are captured in the manner reflected in the Company's analysis or allocated across the various projects.⁸⁷ Second, as

⁸⁶ We also are unconvinced by Mr. Rábago's attempt to mischaracterize the Company's explanation of Barry Unit 5's operational profile. Like the Company, we understand the difference between a peaking facility like Calhoun Power, and a baseload technology resource like Barry Unit 5. Mr. Kelley's point is that the Company's immediate needs are peaking in nature, and while a facility like Barry Unit 5 can be operated to cover such periods, its ability to do so will not be as efficient as a true peaking facility. This rather obvious fact is clearly shown in Ex. JBK-3, comparing the incremental cost of operating Barry Unit 5 (in compliance with the ELG rule) with the cost of acquiring and operating Calhoun Power.

⁸⁷ See Deposition of John Kelley, p. 145, line 21 through p. 146, line 22.

reflected in the revised table, when transmission costs are evenly allocated across all the projects in the solar/BESS portfolio, a subset of 15 projects continues to yield a cost/kW higher than Calhoun Power (\$545/kW, as opposed to \$497/kW). And this is without adjustment for: (i) the excluded Barry Unit 5 operating costs; (ii) the excluded value of having Calhoun Power for the winter of 2023; and (iii) the cost to address the even larger shortfall in capacity (125 MW under revised Table KRR-2, as opposed to 80 MW under original Table KRR-2). Thus, while we affirm the Presiding Judge's decision regarding Energy Alabama/GASP's filing of this revision, finding it to be both improper surrebuttal and prejudicially tardy, we likewise do not find the contents of the revision to provide any basis upon which to question the economics of the Calhoun Power acquisition relative to the solar/BESS portfolio. Even if allowed, the revision would have served to validate, not undermine, the Company's Petition and the economic evaluations supporting it.

As for the remaining matters that received attention at hearing, we do not find them to rise to any level of materiality, let alone substantiality, sufficient to overcome the evidentiary showing made by Alabama Power. For example, we are not dissuaded by the fact that Alabama Power's parent Southern Company identifies risks relating to natural gas supply and availability in its filings with the Securities and Exchange Commission.⁸⁸ Large operations such as the provision of electricity to nearly 1.5 million customers entail any number of risk factors, and they are not unique to energy produced by natural gas. Indeed, since the hearing, we have seen numerous reports regarding significant disruptions in the solar market, with hundreds of planned projects canceled or delayed.⁸⁹ Suffice it to say that every form of supply necessarily carries its own set

⁸⁸ See Hearing Tr., p. 110, line 16 through p. 113, line 21 & Energy Alabama/GASP Ex. 3.

⁸⁹ See, e.g., Julia Gheorghiu, *Senators press for quicker solar anti-dumping investigation amid reports of sector's 'rapid degeneration'*, Utility Dive (published April 6, 2022, updated May 3, 2022), available at <https://www.utilitydive.com/news/senators-press-for-quicker-solar-anti-dumping-investigation-amid-reports-of-sector-s-'rapid-degeneration'/621654/>.

of potential risks (some perhaps being unknown at present), requiring the utility to assess those risks and, if the decision is made to proceed with a given alternative, manage them as cost-effectively as practicable should they come to bear.

We also do not find the current spike in the price of natural gas to undermine the evidence supporting an acquisition of Calhoun Power. Mr. Kelley acknowledged at hearing that the price of natural gas is undergoing a period of volatility,⁹⁰ and publicly available information confirms that prices have not been as high as they are presently since a spike during the Texas power crisis in February of 2021.⁹¹ High prices are, however, alleviated in some respect through the discount to the firm transportation agreement that will be used to deliver natural gas to the Calhoun Power facility.⁹² In addition, as the evidence shows, the purpose of Calhoun Power is to meet peaking needs on the system, making its economics less sensitive to fuel price fluctuations.⁹³ By design, the resource is not intended to run as frequently as a non-peaking resource, with its value primarily in the capacity it provides for purposes of reliability. Regardless of the frequency of its operation, Calhoun Power will contribute to the requisite capacity needed for system reliability, facilitating the Company's ability to meet peak loads.⁹⁴

At hearing, Energy Alabama/GASP seemed to imply that Company somehow committed a mistake by adhering to the requirements of the *2015 RGC Order* in its performance of the 2020

⁹⁰ See Hearing Tr., p. 115, lines 14-18.

⁹¹ See, e.g., Henry Hub Natural Gas Spot Price, *available at* <https://markets.businessinsider.com/commodities/natural-gas-price>; *see also* <https://fred.stlouisfed.org/series/DHHNGSP>.

⁹² See Hearing Tr., p. 116, lines 1-11.

⁹³ See Rebuttal Testimony of John Kelley, p. 15, lines 5-15.

⁹⁴ See *id.*, p. 16, lines 1-20; *see also* Hearing Tr., p. 116, lines 1-20 & p. 201, lines 2-11. In addition, we would observe that Calhoun Power's configuration as a dual-fuel facility gives it the ability to operate when natural gas is unavailable or if the price of the commodity is extraordinarily high. See *id.*, p. 114, line 11 through p. 115, line 5.

RFP for renewable resources. A similar line of inquiry involved the fact that the Company did not pursue an RFP for capacity resources, such as it did in advance of the petition that ultimately led to the *2020 Certificate Order*. Neither of these issues gives us pause. First, as to the 2020 RFP, the Company has been consistent in its performance of market solicitations, as directed by the *2015 RGC Order*.⁹⁵ If, as Energy Alabama/GASP suggest, the course employed by the Company is somehow resulting in more optimal projects not being tendered (and if the economic differences presented by such projects are material), then one would have expected them to have raised the issue when Alabama Power proposed to extend that certificate last summer.⁹⁶

Second, as to the performance of RFPs generally, our policies acknowledge the inherent value of such pursuits. Formal and mandatory bidding processes are not, however, required by Alabama law, and we have recognized the importance of the Company being able to pursue extraordinary opportunities on a case-specific basis. The evidentiary record in this case convincingly shows Calhoun Power to be the sort of opportunity contemplated by our guidelines as meriting pursuit outside of any formalized process. Had there been some defect in the Company's appraisal of the circumstances (as well as its use of a representative PPA in its evaluation), we would have expected Staff's prefilings review, or the intervenors' scrutiny of the case, to have elucidated the issue. Neither has transpired.

⁹⁵ See *2015 RGC Order*, p. 10.

⁹⁶ See *In re Certificate of Convenience and Necessity (Renewable Generation Certificate)*, APSC Docket No. 32382 (Aug. 11, 2021). Notwithstanding our continued support of the RGC and its associated RFP requirements, we encourage the Company to explore other opportunities for identifying reliable, cost-effective solar/BESS projects that would enable it to gain meaningful experience with the utilization of such resources and their integration with overall system operations. Given the record developed in Docket No. 32953 and in this proceeding, coupled with our general knowledge of the industry, it appears this technology is maturing and finding increasing acceptance as a reliable utility-scale capacity alternative to traditional peaking resources. The turnkey solicitation employed in connection with Barry Unit 8 would seem to be a viable way of exploring this option, although the Company may identify equally effective means. In this regard, and recognizing Mr. Kelley's testimony at hearing, nothing here should be seen as a restriction on the Company pursuing appropriate projects in the usual course of business. Cf. Hearing Tr., p. 85, line 17 through p. 86, line 5.

Finally, and to repeat what was offered only two years prior, we reaffirm Alabama Power’s ongoing use of the RIM test as the appropriate measure for cost-effectiveness.⁹⁷ The RIM test has informed the Company’s supply-side and demand-side resource procurement decisions for decades. The underlying goal of minimizing rate pressure for the benefit of all customers has led us to retain it, thereby ensuring that certain segments of Alabama Power’s customers do not subsidize others. Claims that more programs could be realized through the use of a different test, or Mr. Rábago’s mistaken (and ostensibly copied) opinion that the Company does not subject resource decisions to the RIM test,⁹⁸ do not offer a legitimate basis for abandoning the RIM test. As we said in the *2020 Certificate Order*, “more” does not always mean better, particularly when the additional DSM measures would cause cross-subsidization.

C. Rate Treatment for Calhoun Power

We find the Company’s requested rate treatment, as summarized in Mr. Kelley’s direct testimony, to be consistent with prior such requests by the Company and in accordance with the cost recovery mechanisms on file with this Commission. For the acquisition of Calhoun Power, we direct Alabama Power to take all appropriate actions in accordance with Part A of Rate CNP (Adjustment for Commercial Operation of Certificated New Plant) upon the closing of the acquisition of the facility. Upon its effectiveness for billings, the Part A Plant Factor shall include the retail revenue requirement on the acquisition cost, net of amortization, depreciation and other allowed adjustments, and net of changes to plant assets, determined in accordance with Rate CNP.

⁹⁷ Cf. *2020 Certificate Order*, p. 52.

⁹⁸ Reflecting on Mr. Rábago’s use of the word “resources” in this part of his testimony, when elsewhere Mr. Rábago refers to the facility proposed for certification as the “Calhoun Plant”, we cannot help but wonder if Mr. Rábago simply copied portions of his testimony from Docket No. 32953—portions which we unequivocally rejected in the order in that proceeding. See *2020 Certificate Order*, pp. 48-52; see also Direct Testimony of Karl Rábago, p. 28, lines 10-11.

Reasonably identifiable costs and attributes related to compliance with governmental mandates, such as expenditures associated with plant assets, operating and maintenance expenses, and accumulated depreciation and deferred income taxes, shall be excluded from the Plant Factor, but shall be recoverable through the Rate CNP, Part C Compliance Factor. Likewise, all associated energy costs, as defined by Rate ECR (Energy Cost Recovery Rate), shall be recoverable in accordance with that rate. Finally, as this acquisition is for purposes of reliability, the total retail revenue requirement reflected in the Plant Factor for the upcoming 12-month period, including operation, maintenance and depreciation expenses, shall be allocated based on the Revenue Allocation formula. Consistent with the FERC Uniform System of Accounts, Alabama Power also shall record as an electric plant acquisition adjustment in FERC Account 114 the difference between the original cost of the facility, net of accumulated depreciation, amortization and other allowed adjustments, and the acquisition costs for Calhoun Power. The Commission further authorizes the Company to amortize the amounts recorded in FERC Account 114 to FERC Account 406 over the remaining life of the facility (which at this time is estimated to be approximately 20 years).

After consideration of the record compiled in this case, including the written and document discovery provided to the Commission Staff in accordance with the *December 22 Ruling* and the testimony and exhibits received at the hearing, along with other information available to the Commission, the adequacy and reliability of the Company's system, and the necessity and desirability of the addition of Calhoun Power as related thereto, the Commission **FINDS** that it is in the interest of the Company and of the public served by it that the acquisition of existing combustion turbine generating capacity in Calhoun County, Alabama, as described more fully

herein, together with all transmission facilities, transmission arrangements, structures, substations, and facilities, environmental control measures, facilities or arrangements for the handling, treatment, transportation, delivery and processing of fuel, and any and all other appliances, appurtenances, facilities, rights, equipment, acquisitions, commitments and accounting authorizations necessary for or incident thereto, be obtained as proposed and described by the Company in this proceeding. The Commission **FURTHER FINDS** that the Company has complied with all of the laws of the State of Alabama with the administration of which the Commission is charged applicable to the certificate of public convenience and necessity herein sought.

IT IS, THEREFORE, ORDERED BY THE COMMISSION that the October 28, 2021 Petition of Alabama Power Company be and hereby is in all things granted, and the Commission, by the issuance of this instrument as a Certificate of Convenience and Necessity, does hereby grant and confer upon Alabama Power Company, its successors and assigns, all the rights, power and authority that, under the laws of the State of Alabama, the Commission is authorized to confer for the purpose of enabling the Company to acquire the existing combustion turbine generating capacity in Calhoun County, Alabama referred to herein as Calhoun Power, together with all transmission arrangements, structures, substations, and facilities, environmental control measures, facilities or arrangements for the handling, treatment, transportation, delivery and processing of fuel, and any and all other appliances, appurtenances, facilities, rights, equipment, acquisitions, commitments and accounting authorizations necessary for or incident thereto.

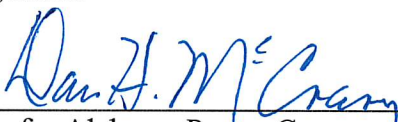
IT IS FURTHER ORDERED BY THE COMMISSION that a copy of this instrument be retained in the records of this Commission and that the original, under the seal of the

Commission, be furnished to the Company as a Certificate of Convenience and Necessity authorized and required under the provisions of Alabama Code § 37-4-28.

IT IS FURTHER ORDERED BY THE COMMISSION that the Company implement the rate and regulatory accounting treatments and otherwise tender all necessary filings and submissions to this Commission in accordance with the discussion provided in the body of this Order.

IT IS FURTHER ORDERED BY THE COMMISSION that this Order shall be effective as of the date hereof.

Respectfully submitted, this 10th day of May, 2022.



Attorney for Alabama Power Company


OF COUNSEL:

Dan H. McCrary
Scott B. Grover
Balch & Bingham LLP
1710 6th Avenue North
Birmingham, Alabama 35203
Phone: (205) 251-8100
Fax: (205) 226-8799

Robin G. Laurie
Riley W. Roby
Balch & Bingham LLP
105 Tallapoosa Street, Suite 200
Montgomery, Alabama 36104
Phone: (334) 269-3146
Fax: (866) 736-3859

CERTIFICATE OF SERVICE

I hereby certify that on this the 10th day of May 2022, I have served a copy of the foregoing brief via electronic mail on the active participants in Docket No. 33182.



OF COUNSEL